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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/430,536	10/29/1999	RENE LEERMAKERS	PHA-23.819	7444

7590                    05/23/2002

C/O US PHILIPS CORPORATION  
INTELLECTUAL PROPERTY DEPARTMENT  
580 WHITE PLAINS ROAD  
TARRYTOWN, NY 10591

EXAMINER

HO, CHUONG T

ART UNIT

PAPER NUMBER

2153

DATE MAILED: 05/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/430,536</b>	Applicant(s) <b>Rene Lermakers</b>
	Examiner <b>Ho</b>	Art Unit <b>2153</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on \_\_\_\_\_.
  - 2a)  This action is FINAL.      2b)  This action is non-final.
  - 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.
- Disposition of Claims**
- 4)  Claim(s) 1-30 is/are pending in the application.
  - 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
  - 5)  Claim(s) \_\_\_\_\_ is/are allowed.
  - 6)  Claim(s) 1-30 is/are rejected.
  - 7)  Claim(s) \_\_\_\_\_ is/are objected to.
  - 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some\* c)  None of:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
  - a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____   | 6) <input type="checkbox"/> Other: _____                                    |

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***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in-  
(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 1-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Metz et al.

(U.S. Patent No.5,978,855).

In the claims 1, 21, Metz et al. discloses the system provides for downloading application software and transmitting audio/video information through one channel of a digital broadcast network; comprising:

- ◆ a server system that stores software application (see figure 1, col. 9, lines 6-7, server 12 includes executable application software or code);
- ◆ a broadcast system (source system 11, 11') that broadcasts the software application (see figure 1, col.9, lines 18-22, source system 11 offers a plurality of broadcast programs from source 13 and broadcasts software for the downloading service. Other source system such as system 11' may be identical to system 11 and offer both broadcast programming and software);

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◆ a multiplicity of portable clients ("PDA", see col. 26, lines 1-4) that each include a receiver having a tuner (see col. 5, line 60) that is selectively tunable to receive a selected one of the software applications broadcast by the broadcast system (see col. 6, lines 10-20, the application software comprises executable code for controlling operations of a digital set-top terminal in response to user inputs and a plurality of function calls for calling predetermined network communications function of software were resident in the digital set-top terminal. The functions calls include a channel change function call, and a function call for establishment of a two-way low-speed data communication. Examples of the storage medium include the random access memory in the digital set-top terminal and a memory within a software server (e.g. coupled to a communication network for broadcast of the software).

3. In the claim 2, Metz et al. discloses the broadcast system is a wireless broadcast system (see col. 26, col. 1-4, the IR transmitter 147 and IR receiver 145 may operate together to provide a two-way wireless data communication link to some remote device, such as a personal data assistant (PDA) or pocket organizer).

4. In the claim 3, Metz et al. discloses a two way communication link between the server system (source system 11, 11') and each of the multiplicity of portable clients, wherein the two-way communications link includes a forward channel over which the respective portable client can transmit client data to the server system, and a return channel over which the server can transmit system data to the respective portable client (see col. 9, lines 60-65, the operating system

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and resident application provide all communications to nodes of the network 15, 16, for example to select broadcast channels and to establish two-way data communications).

5. In the claims 4, 17, Metz et al. discloses each of the portable (Motorola 6800) clients includes a modem for establishing the two-way communications link (see col. 27, lines 43-60).

6. In the claims 5, 6, 8, 16, 24, 25, 26, Metz et al. discloses the modem of each of the portable clients is a wireless modem (see col. 27, lines 43-60).

7. In the claim 7, Metz discloses the broadcast system (the source 11, 11') broadcast the software applications over different channels each occupying a different respective frequency band (see col. 5, lines 38-39, lines 59-60).

8. In the claims 9, 22, Metz discloses the tuner of the receiver of each of the multiplicity of portable clients is selectively tunable to any selected one of the plurality of different frequency bands in order to receive one or more selected one of the software applications broadcasted by the broadcast system (see col. 5, lines 59-60, col. 6, lines 45-47).

9. In the claims 10, 23, Metz discloses a two-way communications link between the server system (the source system 11, 11') and each of the multiplicity of portable clients, wherein the two-way communications link includes a forward channel over which the respective portable client can transmit client data to the server system (the sources system 11, 11'), and a return channel over which the server system (the source system 11, 11') can transmit system data to the respective portable client (see col 6, lines 28-35).

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10. In the claim 11, Metz discloses the two-way communications link between the server system (the sources system 11, 11') and each of the multiplicity of portable clients is a telephone connection (see col. 33, lines 5-10).

11. In the claim 12, Metz discloses each of the portable clients is a portable data communication device (see col. 21, lines 43-60).

12. In the claim 13, Metz discloses each of the portable clients includes a user-interface that enables a user to select one of the broadcasted software applications for downloading, and a processing for executing the downloaded software application (see col. 5, lines 57-60).

13. In the claim 14, Metz discloses the broadcast system broadcasts the software applications over different channels each occupying a different respective frequency band (see col. 5, lines 31-32); the tuner of the receiver of each of the multiplicity of portable clients is selectively tunable to any selected one of the plurality of different frequency bands in order to receive one or more selected one of the software applications broadcasted by the broadcast system (see col.5, lines 59-60, col.9, lines 15-20).

14. In the claim 15, Metz discloses a two-way communications link between the server system (the source system 11, 11') and each of the multiplicity of portable clients, wherein the two-way communications link includes a forward channel over which the respective portable client can transmit client data to the server system (the sources system 11, 11'), and a return channel over which the server system (the source system 11, 11') can transmit system data to the respective portable client (see col 6, lines 28-35).

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15. In the claims 18, 27, Metz discloses instructions for supervising the downloading of software applications (see col. 20, lines 12-14).

16. In the claims 19, 28, Metz discloses request for unrecoverable software application data, and the system data include the unrecoverable software application data (see col. 46, lines 10-22).

17. In the claims 20, 29, Metz discloses the client data includes client software download request data, and the system data includes download control data issued in response to the client software download request data (see col. 11, lines 16-19).

18. In the claim 30, Metz discloses the broadcast system broadcasts the software applications over different channels each occupying a different respective frequency band (see col. 31, lines 60-65); the tuner is selectively tunable to any selected one of the plurality of different frequency bands in order to receive the selected one of the software applications broadcasted by the broadcast system (see col. 5, lines 59-60).

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***Conclusion***

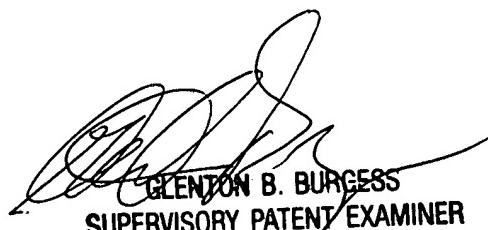
19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuong Ho whose telephone number is (703)306-4529. The examiner can normally be reached on Monday-Friday from 9am to 3pm.

20. If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Burgess, Glenton, can be reached on (703)305-4792.

Any inquiry of a general nature or relating to the status of this application or proceeding should be direct to the group receptionist whose telephone number is (703) 305-3900.

CH

Date 05-15-02



GLENTON B. BURGESS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

## Attachment for PTO-948 (Rev. 03/01, or earlier)

6/18/01

**The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.**

### **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

#### **1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTO-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

#### **2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

#### **Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.